D.B. CIVIL SPECIAL APPEAL (WRIT) NO.303/2005.

Sr.Divisional Manager, Bikaner Vs. Anter Singh & ors.

DATE OF ORDER : 26.07.2005.

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. R.S. CHAUHAN, J.

Mr. B.L. Purohit for the appellant.

This appeal is directed against the order of the learned Single Judge dated 12.4.2005 by which the writ petition filed by the appellant-petitioner was dismissed.

Brief facts giving rise to this appeal are as under:

On a proposal made on 14.8.2002, a policy in the sum of Rs.1 Lac was issued in favour of the Rajesh (now deceased) by charging premium. The deceased was admitted in Rohilla Nursing Home, Sadulpur w.e.f. 4.7.202 to 13.7.2002. Thereafter, he was referred to P.B.M. Hospital, Bikaner and was admitted there on 17.8.2002 and was operated for cancer disease on 23.8.2002 and was discharged on 8.9.2002. Thereafter, he remained admitted there w.e.f. 14.4.2003 to 1.5.2003. Thereafter he died on 14.6.2003. During this period, two premiums

were paid with the Corporation.

The Corporation has taken the plea in support of the decision, but repudiated the claim that policy was obtained by concealing the fact about the insurer suffering from cancer, about which it was stated that the insurer knew. However, the Permanent Lok Adalat found on the material available from the record that it cannot be concluded positively that insurer's policy in proposal was made with prior knowledge about the sufferings of cancer (carcinama rectum). The disease was diagnosised later on was not accepted. The Permanent Lok Adalat directed the Insurance Company to pay Rs.1 Lac. The Lok Adalat further directed that if the amount is not paid within one month, it will carry interest @ 9 %, a cost of Rs.500/- was also awarded.

Under the provisions of The Legal Services Authorities Act, 1987 as amended from time to time, under Section 22-E, the Award of Permanent Lok Adalat is deemed to be a decree of a civil court and accepted as if passed by the Civil Court having local jurisdiction for the matter as if decree made by the Court. Under that provision, according to sub-section (4) every award made

by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding. However, after leaving the status of the award as a decree passed by the civil court having local jurisdiction to the subject matter and it is executable as a decree under the Civil Procedure Code whether it is subject to the other directions of the Code of the Civil Procedure related to the appeal under the Act of 1957 is given.

Be that as it may, the Corporation tried to challenge the award deeming it to be a decree of the civil court by a court having local jurisdiction to try the suit by way of filing the writ petition before this Court.

The learned Single Judge did not find it to be a cause in extraordinary jurisdiction. The above finding recorded by the Permanent Lok Adalat, cannot be held to be perverse or suffering from error apparent on the record, which can be examined by this Court. Hence, this appeal.

We are of the opinion that as to when it be treated as a decree of the civil court and when there is no violation against applicability of provisions of appeal, then

no letters patent appeal can be entertained, if it is held that the award of the Permanent Lok Adalat is not final, then too it is not liable to be challenged in appeal. The finding that the Corporation has not been able to prove positively that the policy was taken with the prior knowledge of the insurer Rajesh Kumar being suffering from cancer, is a finding of fact not suffering from any error apparent on the face of record or any suspicion arose about the claim which legitimately arise against insurer on account of its policy.

In the totality of the circumstances, we are of the opinion that power of extraordinary jurisdiction, cannot be invoked for the present purpose.

As a result, the appeal fails and is hereby dismissed.

(R.S. CHAUHAN)J. **(RAJESH BALIA)J.**

Anil/